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9 RGIS INVENTORY SPECIALISTS, INC.)

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION
13

14 TRISHA WREN, ET AL.,

Case No. 3:06-cv-5778 (JCS)

15 Plaintiffs,

16 v.

17 RGIS INVENTORY SPECIALISTS, INC.,

18 Defendant.

**DEFENDANT RGIS, LLC.'S RESPONSE
TO OBJECTIONS TO DEFENDANT'S
EVIDENCE SUBMITTED ON REPLY IN
SUPPORT OF DEFENDANT'S MOTION
TO DECERTIFY COLLECTION ACTION**

Date: January 9, 2009

Time: 9:30 a.m.

Place: Courtroom A, 15th Floor

Honorable Joseph C. Spero

Defendant hereby responds to Plaintiffs' Objections to Defendant's Evidence Submitted on Reply in Support of Defendant's Motion to Decertify Collection Action. (*See* Dkt. 662).

I. DECLARATION OF SUSAN B. BURR

Plaintiffs object to portions of the Burr Declaration on the grounds that it violates Civil Local Rule 7-5(b) and Federal Rule of Civil Procedure 56(e). Plaintiffs essentially argue that portions of the declaration fail to comply with both rules because they do not "avoid conclusion and argument" and are not "made on personal knowledge." Interestingly, Plaintiffs cite to no Federal Rules of Evidence as grounds for excluding any portion of this declaration.

These evidentiary objections are without merit. No part of the declaration runs afoul of any federal rules. In fact, Plaintiffs have considerable temerity in proffering these evidentiary objections, as the Burr Declaration is nearly identical in form to the Declaration of Nancy Park Plaintiffs submitted with their response brief. (*See* Dkt. 611).

A. Argumentative Headings

The headings in the Burr Declaration mirror the Park declaration's headings. For example, the first three headings in the Park Declaration are: (A) All auditors perform the same job duties and use the same equipment; (B) RGIS is centralized and hierarchical; and (C) All auditors, assistant team leaders and team leaders are subject to the same written policies and procedures. The corresponding headings in the Burr Declaration are: (A) Response to Section A: All auditors perform the same job duties and use the same equipment; (B) Response to Section B: RGIS is centralized and hierarchical; and (C) Response to Section C: All auditors, assistant team leaders and team leaders are subject to the same written policies and procedures.

The headings in the Burr Declaration should not be stricken as they are directly responsive to the headings in the Park Declaration and are merely summarizing the evidence submitted therewith.

B. Entire written paragraphs of argument

Similarly, the alleged "paragraphs of argument" in the Burr Declaration Plaintiffs refer to are merely responsive to the corresponding paragraphs in the Park Declaration. They are not

argument, but merely summaries of the relevant evidence.¹

For example, one of the first objectionable “paragraphs of argument” Plaintiffs refer to in the Burr Declaration states as follows: “the ‘policy documents’ cited by Plaintiffs demonstrate, contrary to Plaintiffs’ contention, that Assistant Team Leaders and Team Leaders have a multitude of duties and responsibilities that are not shared with Auditors, such as scheduling, completing weekly reports, conducting pre-inventory briefings and quarterly Team Leader meetings, mentoring and training team members and other duties” – and then cites to evidence supporting this summary. *See* Burr Declaration (Dkt. 629), p. 2-3. This paragraph is directly responsive to the corresponding portion of the Park Declaration: “The auditors who were deposed confirmed that Assistant Team Leaders and Team Leaders perform the same job duties as auditors.” *See* Park Declaration (Dkt. 611), p. 7. The Burr Declaration is not argumentative just because it cites to evidences that contradicts the Park Declaration.

C. Cells of text

Plaintiffs summarily state, without explanation, that “numerous cells of text [in the Burr Declaration] are pure argument...and outside the personal knowledge of the witness.” Plaintiffs cited only to two pages in the Burr Declaration as being objectionable for this purpose. This argument is essentially the same as those above and can be rejected for the same reasons. The “cells of text” in the Burr Declaration are directly responsive to the “cells of text” in the Park Declaration. Burr’s Declaration responded to Park’s “analysis” of what these documents purportedly mean and added an additional column to several of Park’s charts to address Plaintiffs’ inaccurate depictions of RGIS’ policies. Burr’s Declaration also responds to Plaintiffs’ selective compilation of internal and administrative charges in Paragraph 50 of Park’s declaration and Paragraph 31 of Lee’s declaration.

D. “RGIS’s Response” Column in Tables Throughout the Declaration

RGIS unquestionably has a right to respond to the “summary” of evidence submitted with the Park Declaration – especially considering that the Park Declaration cited to large amounts of

¹ If anything, the evidence summary in the Burr Declaration is less argumentative than the version submitted by Ms. Park, which is nearly four times as long and takes a shocking amount of testimony and documentary evidence out of context.

1 testimony out of context. This response is not “commentary” nor outside the personal knowledge
2 of the declarant.²

3 For example, Plaintiffs quote language in a letter produced by RGIS they identify as
4 “Letter from U.S. Department of Labor, Wage and Hour Division Re Assessment of Civil Penalty
5 (September 13, 2004)” (RGIS 27819):

6 RE: Assessment of civil money penalty for minimum wage and/or
7 overtime violations Dear Messrs. Nicholson: This refers to the
8 recent investigation of RGIS Inventory Specialists operations in
9 Morrow, Georgia under the Fair Labor Standards Act (FLSA)
10 which disclosed violations of the overtime pay and record keeping
11 requirements of the FLSA. The violations occurred because the
12 firm failed to count certain pre-shift time as work time thus
13 resulting in unpaid hours worked and unpaid overtime pay. These
14 violations resulted in underpayments totaling \$3,063.75 due to 31
15 employees. I understand the firm agreed to comply fully with all
16 the provisions of the FLSA in the future and has paid back wages
17 to the affected employees. I take note, however, that similar
18 violations have been encountered in previous investigations of the
19 firm. In 1997, two investigations in New Jersey disclosed similar
20 violations in total of \$11,525 back wages paid to 49 employees; in
21 May 1999, violations were disclosed in a New York investigation
22 with \$1,296 back wages owed to 1 employee; in June 2003, \$943
23 back wages were owed to 16 employees in Alabama. Although no
24 penalty was assessed to section 16(e) of the FLSA which provides
25 for the assessment of a civil money penalty for any repeated or
26 willful violation of section 6 or 7, in an amount not to exceed
27 \$1,100 for each such violation.... (emphasis added).

19 RGIS responded with the following rebuttal:

20 Plaintiffs misquote the last paragraph of the letter. It actually says
21 that ‘Although no penalty was assessed as a result of the most
22 recent investigation in Georgia, you should be aware that if at any
23 time in the future the firm is found to have violated the monetary
24 provisions of the FLSA it may be subject to such penalties.’
25 (emphasis added). This investigation pertains to two RGIS districts
26 which shared the same office in Johannesburg, Georgia. The
27 investigation covered these districts’ practices until mid-2004.
28 RGIS did not have any knowledge of these alleged violations prior
to receiving this notification. See Declaration of Cynthia Myers in
Support of Defendant RGIS, LLC’s Reply to Plaintiffs’ Opposition

² Interestingly, Plaintiffs do not appear to object to all of RGIS’ response columns, even though they are nearly identical to the so-called objectionable sections. See, e.g., Burr Declaration, p. 43-56.

to Decertify Plaintiffs' FLSA Collective Action ("Myers Decl."),
Ex. B (filed herewith).

Burr Declaration, p. 68-69. This response is proper because it cites to evidence that directly
contradicts the misquoted language provided by Plaintiffs.

**E. Citation to Underlying "Evidence" From Managers Who Lack Personal Knowledge
and Foundation for the "Fact" Statements Proffered Therein.**


Plaintiffs offer no proof that these manager declarations are not based on personal
knowledge or that they lack foundation. In fact, in each of these declarations, the affiant declares,
under penalty of perjury, that "I have personal knowledge of the facts set forth in this Declaration
and, if called as a witness, I could and would testify competently and truthfully to such facts
under oath." Additionally, all of the declarations lay an adequate foundation for the testimony by
describing their background with RGIS and the basis for their personal knowledge. Unless
Plaintiffs can present some specific evidence impeaching these witnesses' credibility, then this
attack on the declaration must fail as well.

II. MANAGER DECLARATION TESTIMONY

Plaintiffs' entire argument for the exclusion of these managers declaration is that their
"identities...were not disclosed to Plaintiffs as part of the mandatory disclosure required under
Fed. R. Civ. P. 26." As discussed in more detail in the accompanying Memorandum of Points
and Authorities in Opposition to Plaintiffs' Motion to Strike Defendant's Evidence Pursuant to
Federal Rule of Civil Procedure 37, however, RGIS fully complied with its disclosure obligations
under Rule 26 because these manager declarations were submitted to impeach the 179 new
declarations Plaintiffs' filed in their Response to RGIS' Motion to Decertify Plaintiffs' FLSA
Collection Action. As such, there are no evidentiary grounds to take the drastic step of striking
these declarations from the record.

For the foregoing reasons, RGIS requests that the Court overrule Plaintiffs' evidentiary objections.

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